

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE: Case No.: 23-35660-cgm  
AARON FISCHMAN 355 Main Street  
Debtor. Poughkeepsie, NY 12601  
September 26, 2023  
-----X 8:59 a.m.

**23-35660-cgm Aaron Fischman Chapter 13**

Dawn Kirby representing Aaron Fischman (Debtor)  
Thomas C. Frost (Trustee)  
(no aty) representing United States Trustee (U.S. Trustee)

- Doc #4 Notice of Hearing on Automatic Dismissal with hearing to be held on 9/26/2023 at 08:59 AM at Videoconference (ZoomGov) (CGM) (DuBois, Linda)
- Doc #11 Notice of Hearing to consider the Motion to Extend Deadline to File Schedules or Provide Required Information filed by Aaron Fischman (related document(s)10) with hearing to be held on 9/26/2023 at 08:59 AM at Videoconference (ZoomGov) (CGM).  
Doc #10 Motion to Extend Deadline to File Schedules or Provide Required Information filed by Aaron Fischman. (DuBois, Linda)
- Doc #14 Motion to Dismiss Case for Cause under 11 USC 109(e) filed by Eric W. Berry on behalf of Shalom S. Maidenbaum with hearing to be held on 9/26/2023 at 09:00 AM at Videoconference (ZoomGov) (CGM) Responses due by 9/19/2023,. (Attachments: # 1 Exhibit 1-

UNITED STATES BANKRUPTCY COURT  
HONORABLE CECELIA G. MORRIS

[DOCKET MATTERS AND APPEARANCES CONTINUED ON NEXT PAGE]

Digitally Recorded Proceeding, transcribed by: Lisa Kane

AMERICAN LEGAL TRANSCRIPTION  
11 Market Street, Suite 215  
Poughkeepsie, NY 12601  
Tel: (845) 452-3090 - FAX (845) 452-6099  
amlegaltrans@aol.com

Maidenbaum Judgement v. Fischman 8-21-16) # 2 Exhibit  
2-Maidenbaum Judgment v. Fischman (6-28-16) # 3 Exhibit  
3-IRS Proof of Claim v. Fischman # 4 Exhibit 4-NYS Tax  
Proof of Claim v. Fischman # 5 Exhibit 5-NY AG Judgment  
v. Fischman # 6 Exhibit 6-Fischman Guilty Plea # 7  
Exhibit 7-Contempt Order (4-25-23) # 8 Exhibit 8-Order  
Rescheduling Fischman Compliance # 9 Exhibit 9-  
Severance Order)

VIRTUAL APPEARANCES

FOR THE DEBTOR:

Dawn Kirby, Esq.  
Kirby, Aisner & Curley, LLP  
700 Post Road, Suite 237  
Scarsdale, New York 10583

FOR CREDITOR, SHALOM S.  
MAIDENBAUM:

Eric W. Berry, Esq.  
Berry Law, P.C.  
756 Fifth Avenue, Ste, 5th Fl.  
New York, New York 10150

FOR CREDITOR, SHALOM S.  
MAIDENBAUM:

Jill L. Makower, Esq.  
Tarter Krinsky & Drogin, LLP  
1350 Broadway, 11th Floor  
New York, New York 10018.

FOR UNITED STATES TRUSTEE:

Alicia M. Leonard, Esq.  
DOJ - Ust  
United States Trustee  
Leo O'Brien Federal Building  
11A Clinton Avenue  
Albany, New York 12207

I N D E X

PAGE(S)

NOTICE OF HEARING ON AUTOMATIC DISMISSAL  
MOTION TO DISMISS CASE FOR CAUSE UNDER 11 USC 109(e)

Response:	BY: Mr. Berry	4
Response:	BY: Ms. Kirby	5
Ruling:	The Court	7

1 THE COURT: 23-35660, Aaron Fischman.

2 MR. JOSE: Dennis Jose, Trustee, Judge.

3 MR. BERRY: Eric Berry for creditor, Shalom  
4 Maidenbaum. I have here with me today Jill Makower of  
5 Tarter Krinsky and she is my co-counsel.

6 MS. LEONARD: Good morning, Your Honor. Alicia  
7 Leonard for the United States Trustee.

8 THE COURT: Ms. Kirby, you're on -- you're on  
9 mute.

10 MR. BERRY: Your Honor, we've got to address  
11 (inaudible).

12 MS. KIRBY: Sorry about that.

13 THE COURT: No, Ms. Kirby.

14 MS. KIRBY: Dawn Kirby, Kirby, Aisner & Curley  
15 representing the debtor, Your Honor. Thank you.

16 THE COURT: Very good. Does anyone wish to add  
17 anything from their papers?

18 MR. BERRY: I guess this is --

19 MS. KIRBY: I do, Your Honor.

20 THE COURT: Well, wait just a moment. I'll ask  
21 for the movant first.

22 MR. BERRY: This is Eric Berry for Mr.  
23 Maidenbaum. Just -- it's basically a housekeeping note.  
24 As the Court has seen, we moved to dismiss essentially  
25 under Section 109(e) because \$7.7 million in debts

1 exceeds the eligibility cap of 2.75 million.

2 Last night or maybe late yesterday afternoon  
3 Ms. Kirby on behalf of the debtor filed a request to  
4 convert the case to an 11. There's no formal opposition  
5 to the motion to dismiss. And then later that -- later  
6 in the evening we filed my declaration in which we argued  
7 for dismissal as opposed to converting it to a Chapter 11  
8 case because we believe that reorganization is, first of  
9 all, impossible given the \$7.7 million in judgments and,  
10 secondly, because there is a seven-year history of  
11 refusing to answer questions in the State Court matter  
12 about his financial affairs and the failure to file  
13 schedules here. That's not gonna change this --  
14 magically if this case is converted to an 11.

15 Mr. Fischman has proven to date that he's  
16 incapable of the financial honesty that is incumbent upon  
17 a debtor in a Chapter 11 case, so we believe the case  
18 should be dismissed.

19 THE COURT: Okay. Ms. Kirby.

20 MS. KIRBY: All right. Your Honor, there has,  
21 to my understanding, then long history of massive  
22 litigation between these parties. And I'm very new to  
23 the game having been retained on the 19th of September.  
24 However, I did tell Mr. Berry as well as his co-counsel  
25 on either Thursday or Friday morning of last week that I

1 would be filing the conversion to Chapter 11 that  
2 although their claim is in dispute that to not have to  
3 deal with the controversy or put that on the Court to  
4 determine at this point we were happy to convert to  
5 Chapter 11 and proceed. The debtor has every right to  
6 control the disposition of his assets to satisfy his  
7 creditors.

8           There are some other issues here. The debtor  
9 did come to my office last week twice to fill out the  
10 schedules. We have them substantially complete. There  
11 are a few little things I was waiting for because of the  
12 Yom Kippur holiday, I wasn't able to get everything done  
13 before this morning. But I can represent to the Court  
14 that I can have complete a schedule filed by tomorrow and  
15 that they are almost complete already.

16           Also, Your Honor, there's controversy between  
17 the parties, just so you know, as to whether the  
18 automatic stay is in effect in this case. There was a  
19 prior involuntary filed against Mr. Fischman by one  
20 person who never served everything and Your Honor  
21 dismissed that case. Mr. Fischman was represented by Ms.  
22 Tirelli at the time.

23           The creditor is claiming that because there was  
24 a prior bankruptcy within one year and this is the second  
25 bankruptcy --

1 THE COURT: That has nothing to do with it.  
2 That was an involuntary. I -- I was gonna rule on that  
3 anyway. You got to look at that. That wasn't the  
4 debtor's case.

5 MS. KIRBY: So I -- I would be making a motion  
6 in the Chapter 11 should you convert and let the debtor  
7 proceed here to determine that the automatic stay is in  
8 effect.

9 THE COURT: Okay. Let me just -- let me just  
10 address what's in front of me right now because that all  
11 happened yesterday and that all is -- is very good. And  
12 we will -- we will deal with it as we deal with it.

13 And that is under Section 30 -- and -- and both  
14 of you, I'm giving you both a lesson right now. Section  
15 307 of Bankruptcy Code allows a Bankruptcy Court to  
16 dismiss a Chapter 13 case for cause and enumerates seven  
17 specific occurrences which constitutes sufficient cause.  
18 Although 11 U.S.C 3 -- 1307(c) does not expressly equate  
19 bad faith with cause, the Court can also dismiss the  
20 petition if the debtor files his petition in bad faith.  
21 And there's case law on that.

22 Since I'm not really having to rule, I'm doing  
23 this as a courtesy. To determine whether bad faith exist  
24 or is present, the Court looks at the totality of  
25 circumstances and is only found in egregious cases

1 involving concealment or misrepresented assets or  
2 expenditures, lavish lifestyle in intention to avoid  
3 singular debts incurred through fraud and other means.

4 Here the creditor cites debtor's filing as  
5 cause for dismissal and claims that debtor's personal  
6 filings and the filings of the Chapter 11 case were  
7 intended only to stay a State Court action against the  
8 debtor.

9 You don't give me any reason for that belief.  
10 You know, I have fails to indicate any basis for that  
11 belief. Indeed, the debtor seems to be in financial  
12 trouble. That's what we do. This is Bankruptcy Court.  
13 Whether the debtor's prior case was filed involuntarily  
14 not by the debtor and by -- and the Chapter 11 case is  
15 not the debtors regardless of his relationship with any  
16 entity called Cherson (phonetic). There's no cause for  
17 bad-faith grounds on that.

18 Haven't connected the dots, you've got to  
19 connect dots. Section 109(e) of the Bankruptcy Code  
20 provides that only individuals with other regular income  
21 that owes on the date of the petition non-contingent --  
22 non-contingent liquidated debts -- debts of less than  
23 2.75 million is eligible for relief under Chapter 13 of  
24 code.

25 The Court of Appeals for the 6th, 7th, 9th



1 Circuits have held that a Court should look beyond the  
2 amounts asserted by the debtor and the schedules only if  
3 it determines it was not filed in good faith. Look at  
4 those circuits you'll find that case law.

5 When the debtor does not exercise reasonable  
6 diligence or good faith in completing and following the  
7 schedule -- the schedules, the Court might like to other  
8 evidence including post-petition events such as proof of  
9 claim to determine -- claim to determine eligibility.

10 Here the Court has made no finding of bad faith  
11 on its own efforts. And as mentioned before, the  
12 creditor has only shown why the Court should find the  
13 debtor is acting in bad faith. On the debtor's petition,  
14 he states that there's debts of between 500 and  
15 1,000,000. While the debtor has not yet filed  
16 appropriate schedules that would list his creditors and  
17 debtors, he's filed a motion to extend the time to file  
18 the schedules being heard today that are frequently  
19 request extra time to file schedules especially when  
20 they're finances are complex and the debts are abundant.

21 There's no reason at this point that the debtor  
22 should find bad faith or look past debtor's schedules.  
23 Even if this Court did find bad faith and look past the  
24 schedules to make the debt limit calculations, it's still  
25 not apparent that the debtor is beyond the debt limit.

1 Excuse me.

2 There have only been two proofs of claim filed  
3 in this case, one by New York State and 300 and 1,126 and  
4 the Educational Credit and Management Corporation in the  
5 amount of \$3,084.28. These debts hardly equate to or  
6 even approach 2.75 million debt limit.

7 Though moving to dismiss at this junction, Mr.  
8 Maidenbaum has failed to file a proof of claim. The  
9 other creditors to which Mr. Maidenbaum refers have also  
10 failed to file proofs of claim.

11 The claim bar date is October the 19th. If the  
12 credit -- if the debt -- creditors wish to prevent debtor  
13 from moving forward in this Chapter 13 file their claims  
14 and wait for the opportunity. And that's what you're  
15 probably gonna get with the Chapter 11.

16 Both the creditor and the debtor's attorney  
17 have been rather unaware of the procedures of this Court  
18 follows in the 109 E eligible multi-question as well as  
19 if they're violating the stay where's the motion for  
20 violation of the stay?

21 I only give you this opinion by teaching  
22 moment. I'm not dismissing this case. So I don't know  
23 if you need to --

24 MS. KIRBY: Thank you, Your Honor.

25 THE COURT: -- you're moving forward -- you're

1 converting to an 11. If you think you need an order not  
2 dismissing the 13, go right ahead, but you're already  
3 converted to an 11.

4 MS. KIRBY: Thank you, Your Honor.

5 MR. BERRY: Thank you, Your Honor.

6 (PROCEEDING CONCLUDED)  
7

8 CERTIFICATE

9 I, LISA KANE, certify the foregoing transcript of proceedings  
10 In Re Aaron Fischman, United State Bankruptcy Court, Southern  
11 District of New York, Chapter 13, File Number 23-35660, was  
12 prepared using the required electronic equipment and is a true  
13 and accurate record of the proceedings.  
14

15 Signature: *Lisa Kane* (Electronic Signature)

16 Date: October 1, 2023

17 Agency: American Legal Transcription

18 11 Market Street, Suite 215

19 Poughkeepsie, New York 12601  
20  
21  
22  
23  
24  
25